

APPEAL BY ASSURED ASSET SOLAR 2 LTD

LAND NORTH OF MAIN ROAD, KELHAM

**OPENING STATEMENT
ON BEHALF OF THE APPELLANT**

Introduction

1. The essential background to this appeal is the vast and worsening global climate crisis, and the scale of the challenge faced by national and local authorities to meet targets to address that crisis. The existential risk to life, nature and the economy posed by climate change is not controversial: both the UK Parliament and Newark and Sherwood District Council (“the Council”) have declared a climate change emergency.¹
2. To abate that emergency, and meet the legally binding target of net zero by 2050, a “*once-in-a-generation*” upgrade of energy infrastructure needs to be delivered “*with urgency and determination*”.² The current Government has accordingly introduced a new interim target to generate enough clean power to meet total annual electricity demand by 2030 – just over 4 years away.³ Renewable energy production and battery storage are critical and mutually supporting components of Clean Power 2030 and Net Zero 2050.
3. In addition, the Government has strengthened national policy in order to meet the challenge of climate change. The National Planning Policy Framework (“NPPF”) at §161 now makes a direct reference to the need to transition to net zero by 2050 and its link with the need to support renewable and low carbon energy and associated infrastructure. There also remains a directive to decision makers at §168 that applicants for renewable and low carbon energy

¹ James Cook’s Proof at §§7.14 and CD 4.3.

² CD 5.32 p. 7.

³ CD 5.32 p. 25.

infrastructure should not be required to demonstrate the need, that even small-scale projects provide a valuable contribution, and that significant weight should be given to the benefits associated with the contribution to a net zero future.

4. Set in that context, the development which this appeal seeks to bring forward at Land North of Main Road (“the Appeal Site”) is a comprehensive one, comprising of a 49.9MW solar farm (on the cusp of the NSIP threshold) as well as a 50MW battery energy storage scheme (“BESS”) (“the Proposal”). It is the Appellant’s case that the Proposal is in accordance with the development plan and should be consented without delay.⁴ Even were that not so, the limited impacts of the Proposal do not demonstrably outweigh the many substantial benefits, which include a significant contribution to clean energy generation and domestic energy security, improved public access, and a huge gain for biodiversity.⁵ That is why the Proposal was rightly recommended for approval in the Officer’s Report (“OR”).⁶
5. In Opening, we address the main issues for the inquiry in the following order: (1) landscape and visual impacts; (2) heritage impacts; (3) impact on Best and Most Versatile Agricultural Land (“BMVAL”); and (4) benefits and the planning balance.

Landscape and visual impacts

6. The second reason for refusal (“RfR”) contends that the Proposal would have an impact on landscape appearance when taken cumulatively with other renewable energy development. It is common ground that the Proposal is acceptable on its own.⁷ It is also agreed that the Appeal Site and the landscape features within it are not part of a valued landscape within the meaning of the Framework.⁸
7. Insofar as there is said to be cumulative impact, the Council has confirmed that the relevant developments to be factored into that assessment are those listed in paragraph 2.3(c) of the Landscape Statement of Common Ground (“LSOCG”),⁹ which includes the proposed Great

⁴ James Cook’s Proof at §10.3.

⁵ James Cook’s Proof at §15.16.

⁶ CD 3.2.

⁷ Landscape SOCG at §2.3(b).

⁸ Landscape SOCG at §2.2(c).

⁹ Landscape SOCG at §2.3(c).

North Road Development Consent Order (“DCO”).¹⁰ All of those developments have been considered and assessed in the evidence of Mr A Cook.¹¹

8. It is important to bear in mind that the Appeal Site and the wider River Trent vale landscape are punctuated with a linear network of large-scale electricity pylons radiating from the Staythorpe Power Station and adjacent substation a short distance to the south.¹² Beyond the Site, the landscape is populated by a variety of prominent tall metallic elements, including the Power Station, wind turbines and the British Sugar factory with its tall cylindrical silos and chimneys on the edge of Newark-on-Trent.¹³ Two battery schemes to the south of the Site are consented, and are part of the landscape baseline. This is a landscape that has long been associated with energy infrastructure.¹⁴
9. Set in that context, Mr A Cook will outline his assessment that the key defining characteristics of the landscape beyond the Appeal Site and its immediate environs would both remain and prevail with the Proposal in place.¹⁵ Energy development is already characteristic of the local, regional and national landscape areas,¹⁶ and should the Great North Road DCO come forward, solar development would become more of a defining feature.¹⁷ As such, the effect of the Proposal on landscape character would be limited and highly localised.¹⁸
10. As to visual impacts, Mr A Cook will explain that these would be minor, limited and highly localised, due to the degree of visual containment surrounding the Appeal Site and the limited opportunity to gain simultaneous or sequential views of energy infrastructure with the Proposal in place. The DCO is not yet at examination, and cumulative matters may well be an issue for that project in due course. It is not, and could not, be a reason to refuse this appeal Proposal. The main visual impacts would be on users of public rights of way (“PRoW”) through and to the west the Site, who may gain sequential views of the Proposal

¹⁰ Landscape SOCG at §2.3(c)(v).

¹¹ Andy Cook’s Proof at §10.1.

¹² Andy Cook’s Proof at §3.33.

¹³ Andy Cook’s Proof at §3.4.

¹⁴ Andy Cook’s Proof at §3.4.

¹⁵ Andy Cook’s Rebuttal at §3.2.

¹⁶ Andy Cook’s Proof at §§10.5, 10.8 and 10.10.

¹⁷ Andy Cook’s Rebuttal at §3.2.

¹⁸ Andy Cook’s Rebuttal at §§3.5 and 3.8.

and DCO from some locations, but such locations would themselves be limited and highly localised.¹⁹

11. Further, any adverse landscape character effects associated with the Proposal, such as there may be, would be limited to the operational period of 40 years.²⁰ After decommissioning, all above ground built infrastructure would be removed, to enable the Appeal Site to return to its previous arable use.²¹ However, landscape enhancements would remain and provide a positive legacy in landscape character terms.²²
12. A refined Landscape Masterplan with minor clarifications and enhancements has now been consulted on and is commended to the Inspector in support of this appeal.²³

Heritage impacts

13. The third RfR asserts that the public benefits of the Proposal would not outweigh the less than substantial harm caused to designated heritage assets including Kelham Conservation Area and Kelham Hall. The Council's heritage case has evolved during the course of this appeal, such that harm is now alleged to a further three designated heritage assets and three non-designated heritage assets.
14. Although the RfR also refers to non-compliance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, it is common ground that this is not a mandate for preservation but a requirement to have special regard to preserving a listed building and its setting.²⁴
15. The Appellant recognises that there will some heritage harm arising from the Proposal, and that there are 11 heritage assets that are relevant to consider.²⁵ Ms James-Martin, on behalf of the Appellant, has assessed and paid special regard to each of those. For completeness, Ms James-Martin has also considered Kelham Country Manor House, notwithstanding that

¹⁹ Andy Cook's Rebuttal at §3.23.

²⁰ Andy Cook's Proof at §5.29.

²¹ Andy Cook's Proof at §11.14.

²² Andy Cook's Proof at §5.30.

²³ James Cook's Proof at §6.3 and CD 10.50.

²⁴ Heritage SOCG at §2.4(d).

²⁵ Heritage SOCG at §2.1(b).

it is not designated, does not appear on any local list and has not been added to the Historic Environment Record.²⁶

16. Taking a measured and sensible approach, Ms James-Martin concludes that there would be only negligible harm, at the lower end of the less than substantial scale, to Kelham Conservation Area and Kelham Hall Park.²⁷ As Ms James-Martin will explain, setting is not the most important part of these assets' heritage significance, nor is the Appeal Site the most important part of these assets' settings.²⁸ The limited harm arises in each case through changes in isolated and incidental views, which have already experienced significant alteration.²⁹ Any harm identified would be removed on decommissioning.
17. In order for a development to impact on the setting of a heritage asset, it is trite that there has to be a distinct visual relationship of some kind between the two, which is more than remote or ephemeral, and which in some way bears on one's experience of the listed building in its surrounding landscape.³⁰ Ms James-Martin will explain that the process of identifying the setting and its contribution to significance is more nuanced than ascertaining whether one can see an asset or be seen from it.³¹
18. Ms James-Martin will explain that there is an essential distinction between incidental views of an asset and views in which an asset is best appreciated and experienced, and a need to focus on the nature and extent of alteration to the particular aspects of an asset's setting that contribute to its significance.³² Harm also needs to be assessed in context, which here is one of modernity and change.³³ When that approach is taken, it is apparent that the Proposal is far less harmful than the Council suggests.
19. The negligible harms which Ms James-Martin does identify will need to be weighed against the public benefits in the planning balance.

²⁶ Charley James-Martin's Proof at §8.73,

²⁷ Charley James-Martin's Proof at §10.5.

²⁸ Charley James-Martin's Proof at §7.7 and Table.

²⁹ Charley James-Martin's Proof at §7.7 and Table.

³⁰ *Catesby Estates Ltd v Steer* [2019] 1 P & CR 5 at [25], with emphasis.

³¹ Charley James-Martin's Rebuttal at §3.1.

³² Charley James-Martin's Rebuttal at §4.3.

³³ Charley James-Martin's Rebuttal at §3.5.

Impact on BMVAL

20. The first RfR is predicated on there being a “loss” of BMVAL, which makes up 92% of the Appeal Site.³⁴ The Council has now accepted that any loss of land for agricultural use would be limited to the extent of the access tracks, hardstanding and habitat areas,³⁵ and that land use does not influence the status of land as BMVAL in any event.³⁶
21. It is further agreed that there is no local or national policy which requires agricultural land to be managed for crops or for food production,³⁷ or which precludes the use of BMVAL for solar development.³⁸ That is not surprising, given that land use and land use change are not identified risks to UK food production.³⁹ At most, there is an instruction to recognise the economic and other benefits of BMVAL at §187(b) of the NPPF. Mr Baird explains that, in this case, such benefits include the efficient energy generation per unit area, the opportunity for simultaneous sheep grazing and the inevitable recovery of underlying soil health.⁴⁰
22. James Cook also explains that the Appellant undertook an extensive site selection process, guided by agricultural land classification (“ALC”) and the availability of a grid connection, which demonstrated that there was no unconstrained land within the search area of a lower ALC grade.⁴¹ That is an agreed matter between the parties⁴² notwithstanding the fact that there is no requirement for a sequential test for BMVAL in national policy⁴³ and, to that extent, Policy DM8 is agreed to be out of date.⁴⁴
23. Ultimately, and as Mr Baird notes in his Rebuttal, the Council’s case for advancing this RfR rests on a fundamental misconception that there will be a loss of BMVAL during or after the operational period of the Proposal.⁴⁵ In the absence of any loss of BMVAL or any

³⁴ Agricultural land SOCG at §2.1(f).

³⁵ Agricultural land SOCG at §2.2(d).

³⁶ Agricultural land SOCG at §2.3(d).

³⁷ Agricultural land SOCG at §2.2(b).

³⁸ Agricultural land SOCG at §2.3(b).

³⁹ Daniel Baird’s Proof at §9.2.

⁴⁰ Daniel Baird’s Proof at §11.2.

⁴¹ Overarching SOCG at §9.42(i).

⁴² Chris Whitehouse Proof at §4.7

⁴³ James Cook’s Proof at §10.3.

⁴⁴ Overarching SOCG at §9.42(h).

⁴⁵ Daniel Baird’s Rebuttal at §1.9.

policy conflict, the impact on BMVAL is, logically, negligible.⁴⁶

Planning Balance

24. Turning to the planning balance, Mr J Cook concludes that, applying section 38(6) of the Planning and Compulsory Purchase Act 2004, the proposal complies with the development plan when read, as it must be, as a whole.⁴⁷ That is of increased importance in circumstances where no land at all is allocated for renewable energy development in the adopted plan.⁴⁸
25. The significance of the Proposal's compliance with Policy DM4 in particular should not be understated, as the most directly relevant policy for this type of development.⁴⁹ The Council adopted Policy DM4 to fulfil its statutory duty under section 19(1A) of the Planning and Compulsory Purchase Act 2004 to adopt policies designed to secure that the development and use of land in its area contribute to the mitigation of and adaptation to climate change. Policy DM4 is permissive and facilitative of renewable and low carbon energy generation development.⁵⁰
26. In respect of heritage, the question is the extent to which the Proposal would impact the settings of designated and non-designated heritage assets in the vicinity of the Appeal Site and, if so, whether the public benefits outweigh any harm.⁵¹ Mr J Cook will explain his position that the public benefits associated with the Proposal are substantial and far outweigh the limited impact that Ms James-Martin identifies to the two settings of Kelham Conservation Area and Kelham Hall Park.⁵²
27. On the landscape harm, both individual and cumulative, Mr J Cook also considers that the harm, which in respect of large-scale solar schemes is to some extent "inevitable," will be far outweighed by the wider benefits of the Proposal.⁵³

⁴⁶ Daniel Baird's Rebuttal at §1.14.

⁴⁷ James Cook's Proof at §15.18.

⁴⁸ Overarching SOCG at §9.3.

⁴⁹ Overarching SOCG at §9.4.

⁵⁰ Overarching SOCG at §7.1.

⁵¹ Mr Cussen's Proof at §9.4.

⁵² James Cook's Proof at §§12.12 and 12.15.

⁵³ James Cook's Proof at §§11.20

28. The actions and decisions taken by the current Government, including changes made to the NPPF, have attested to their prevailing support for the delivery of renewable and low carbon energy infrastructure. To meet the 2030 target for a decarbonised energy system, an additional 28-30 GW of solar capacity and 18.5-22.5 GW of battery storage will need to be brought forward.⁵⁴ Mr J Cook demonstrates that this will require a significant increase in the installed capacity of 16.6 GW and 4.5 GW, respectively,⁵⁵ and the delivery of the equivalent of two projects with the Proposal's solar capacity each week.⁵⁶
29. Two further important areas of policy are the National Policy Statements ("NPS") EN-1 and EN-3. EN-1 indicates there is now a critical national priority for nationally significant low carbon infrastructure and that, accordingly, it is unlikely that consent will be refused on the basis of impacts to issues such as landscape and heritage.⁵⁷ Whilst the NPSs do not provide the policy basis for assessing the Proposal, as it is on the cusp of being an NSIP (with an export capacity of 49.9MW against the threshold of 50MW),⁵⁸ it is a powerful material consideration in this appeal.
30. In addition, NPS EN-3 confirms that electricity storage is "*essential for a net zero energy system*" as it stores electricity when it is abundant for periods when it is scarce, as well as providing a range of services to help maintain the resilience and stability of the grid.⁵⁹ It goes on to note – in line with the Government's 2030 target – that the need for electricity storage is rising and will be critical to maintaining energy security.⁶⁰
31. Against that policy background, numerous schemes for solar farms and BESS have been granted permission at appeal in recent years, including under the current Government, such as those at *Thaxted*, *Bramley*, *Marden*, *Telford*, *Thoroton*, *Marsh Green*, *Ludlow*, *Caunton*, *Staythorpe*, *Somersham*, *Abington* and *Halloughton*.⁶¹ While the facts of each case will be different, schemes have been permitted in both Valued Landscapes, and in the Green Belt,

⁵⁴ James Cook's Proof at §7.8.

⁵⁵ James Cook's Proof at Table 1.

⁵⁶ James Cook's Proof at §7.8.

⁵⁷ CD 5.26 at §§4.2.16-4.2.17.

⁵⁸ James Cook's Proof at §10.11.

⁵⁹ CD 5.27 at §2.9.9.

⁶⁰ CD 5.27 at §2.9.10.

⁶¹ *Thaxted* (CD 13.2), *Bramley* (CD 13.4), *Marden* (CD 13.7), *Telford* (CD 13.8), *Thoroton* (CD 13.9), *Marsh Green* (CD 13.10), *Ludlow* (CD 13.11), *Caunton* (CD 13.12 and 13.13), *Staythorpe* (CD 13.14), *Somersham* (CD 13.16), *Abington* (CD 13.17) and *Halloughton* (CD 13.18).

in recognition that energy infrastructure has to be delivered where there is capacity in the Grid to accept and distribute the electricity produced. This Site does not engage any protective designations.

32. The Proposal here would provide a solar farm with an export capacity of 49.9 MW, which is enough to power over 12,600 homes and offset 13,400 tonnes of CO₂ per year.⁶² Mr J Cook is clear that substantial weight should attach to the contribution this capacity would make to achieving net zero (with which the Council agrees⁶³) as well as to the diversification of the UK energy supply.⁶⁴
33. Additionally, the Proposal would provide battery storage with a capacity of 50 MW, which would support the delivery of renewable energy development within and beyond the Appeal Site.⁶⁵ Mr J Cook attributes significant weight to the contribution of this storage to national energy security (with which the Council again agrees⁶⁶) as well as further moderate weight to its co-location with renewable energy development.⁶⁷
34. There are also many other compelling benefits the Proposal would secure. Public access to the countryside would be improved through the formalisation and extension of a permissive bridleway and the provision of an alternative and more pleasant route for walkers using the Trent Valley Way. The parties agree that these improvements should be afforded moderate positive weight in the planning balance.⁶⁸
35. The wider environmental benefits would include a significant level of biodiversity net gain (“BNG”) of an anticipated 82.04% in habitat units and 41.70% in hedgerow units, as agreed by the Council.⁶⁹ There would also be a significant amount of landscape enhancements, as a result of the strengthening of existing hedgerows and the planting of new hedgerows and hedge tree planting, which would remain in place after the Site has been decommissioned.⁷⁰

⁶² Appellant’s SOC at §5.6.

⁶³ Overarching SOCG at §8.2.

⁶⁴ James Cook’s Proof at §15.16.

⁶⁵ CD 09.09, SOCG at §4.1(c)

⁶⁶ Overarching SOCG at §8.2.

⁶⁷ James Cook’s Proof at §15.16.

⁶⁸ Overarching SOCG at §8.2.

⁶⁹ James Cook’s Proof at §15.16.

⁷⁰ James Cook’s Proof at §15.16.

36. As to the economic benefits, the Proposal would contribute to the local economy through the creation of direct and indirect job opportunities during the construction phase, which is agreed with the Council to attract some limited weight.⁷¹ Mr J Cook attributes further limited weight respectively to the contribution of approximately £4.1m in business rates and to the opportunity for the diversification of an agricultural business.⁷²
37. These extensive benefits must be weighed against any adverse impacts. Policy, including EN-1, recognises that there are likely to be some impacts arising from renewable energy development, but that those impacts do not automatically make a scheme unacceptable. As set out above, the impacts in this case are limited to minor cumulative landscape harm and less than substantial harm at the low end of the spectrum to two designated heritage assets – harm which in both respects is temporary and reversible.⁷³ No harm arises from use of BMVAL, given that the agricultural land on which the scheme would temporarily sit would not be “lost”.⁷⁴
38. When these considerations are taken in the round, Mr J Cook is clear, as was the Council’s Planning Officer,⁷⁵ that the balance lies heavily in favour of a grant of permission.⁷⁶
39. Accordingly, in due course, the Inspector will be invited to allow this appeal and grant permission, subject to appropriate conditions.

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⁷¹ Overarching SOCG at §8.2.

⁷² James Cook’s Proof at §15.16; Overarching SOCG at §8.2.

⁷³ James Cook’s Proof at §§10.3 and 11.18.

⁷⁴ James Cook’s Proof at §15.16.

⁷⁵ CD 3.2 at §9.14.

⁷⁶ James Cook’s Proof at §15.18.